

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**UNITED STATES OF AMERICA,**

**Plaintiff/Respondent,**

**v.**

**No. CV 10-0618 JB/LAM  
CR 09-1801 JB**

**LUIS CARLOS SANCHEZ-CALDERON,**

**Defendant/Movant.**

**ORDER FINDING WAIVER OF ATTORNEY-CLIENT PRIVILEGE**

**THIS MATTER** is before the Court on the *United States['] Motion for Order Finding Defendant Waived Attorney-Client Privilege by Filing Motion Pursuant to 28 U.S.C. § 2255 (Doc. 6)*. Plaintiff/Respondent states that it will require an affidavit from Defendant/Movant's counsel in his underlying criminal case, Joseph W. Gandert, as part of its response to Defendant/Movant's ineffective assistance of counsel claims in his Section 2255 Motion. *See Doc. 6* at 2. Plaintiff/Respondent, therefore, asks the Court to find that Defendant/Movant has waived his attorney-client privilege regarding communications with Mr. Gandert that relate to his claims of ineffective assistance of counsel. *Id.* at 3. In light of the analysis and holding in *United States v. Pinson*, 584 F.3d 972, 977-79 (10th Cir. 2009), the Court finds that, by claiming ineffective assistance of counsel in his Section 2255 Motion, Defendant/Movant impliedly waived the attorney-client privilege with respect to communications with his attorney to the extent necessary to prove or disprove those claims. Furthermore, the Court enters this order without waiting for Defendant/Movant's response because, first, even if he opposes the motion, *Pinson* clearly directs that it be granted and, second, Plaintiff/Respondent requires the order before it can respond to the underlying Section 2255 Motion, which is due August 2, 2010.

**IT IS THEREFORE ORDERED** that the *United States['] Motion for Order Finding Defendant Waived Attorney-Client Privilege by Filing Motion Pursuant to 28 U.S.C. § 2255 (Doc. 6)* is **GRANTED**, and the Court finds that Defendant/Movant waived his right to assert the attorney-client privilege with respect to communications with Mr. Gandert necessary to prove or disprove his claims of ineffective assistance of counsel.

**IT IS SO ORDERED.**

  
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**LOURDES A. MARTÍNEZ**  
**UNITED STATES MAGISTRATE JUDGE**